

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated October 1, 2008 (hereinafter Office Action) have been considered. Claims 1-12, 14, and 35-46 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

The Office Action rejected all pending claims, i.e., claims 1-12, 14, and 35-46, under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,520,176 (Cohen) in combination with U.S. Publication US 2004/0133079 (Mazar et al.), hereinafter “Mazar”, and in combination with “Aircraft Noise and Sleep Disturbance: Final Report”, prepared by the Civil Aviation Authority London on behalf of the Department of Trade, August 1980 (hereinafter “CAA”). Applicants respectfully submit that this rejection cannot be sustained.

The rejection cannot be sustained at least because the subject matter of Mazar and the invention presently claimed in the subject application were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person, namely, Cardiac Pacemakers, Inc. Reference in this regard is made to the assignment at reel/frame 014723/0395 (wherein Hatlestad, Ni, Stahmann, Hartley, Zhu, KenKnight, Daum, and Lee assign their rights in the present application to Cardiac Pacemakers, Inc.) and the assignment at reel/frame 013994/0965 (wherein Mazar, Fogoros, Manicka, KenKnight, and Pederson assign their rights in the Mazar application to Cardiac Pacemakers, Inc.). Because of this, and because Mazar qualifies as prior art only under one or more of 35 U.S.C. §102 (e), (f), or (g), Mazar is not available as a reference under 35 U.S.C. §103(a) by operation of 35 U.S.C. §103(c). This in turn renders the rejections under 35 U.S.C. §103(a) of each and every pending claim unsustainable because each of the rejections relies on Mazar in combination with the other two cited references. Withdrawal of the rejections and a prompt indication of allowability of the present application is respectfully requested.

To the extent Applicants have not responded to any characterization by the Examiner of the asserted art or of Applicants' claimed subject matter, or to any application by the Examiner of the asserted art to any claimed subject matter, Applicants wish to make clear for the record that any such lack of response should not be interpreted as an acquiescence to such characterizations or applications. A detailed discussion of each of the Examiner's characterizations, or any other assertions or statements beyond that provided above is unnecessary. Applicants reserve the right to address in detail any such assertions or statements in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.058PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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